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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 418

CHESTER PARK APARTMENTS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the District Court for the District of Minnesota (Pet. App. A-1—A-2) is not reported. The opinion of the Court of Appeals for the Eighth Circuit (Pet. App. B-1—B-9) is reported at 332 F. 2d 1.

JURISDICTION

The judgment of the court of appeals (Pet. App. C-1—C-2) was entered on May 28, 1964. The petition for a writ of certiorari was filed on August 21, 1964. The jurisdiction of this Court is invoked under 28 U.S.C.(1).

QUESTIONS PRESENTED

1. Whether, in an action by the United States to foreclose a war housing insured mortgage, federal law governs the right of the United States to enforce an express provision of the mortgage for the appointment of a receiver of the rents of the mortgaged property.

2. Whether the court of appeals correctly held that, in the circumstances of the case, the appointment of a receiver was warranted as a matter of federal law.

STATUTES INVOLVED

The relevant statutes are set forth in the Appendix, *infra*, pp. 13–15.

STATEMENT

This is a suit by the United States to foreclose a mortgage insured by the Federal Housing Administration (FHA) under authority of Section 608 of the National Housing Act, 12 U.S.C. 1743, and assigned to FHA upon the mortgagor's default (R. 1–8).[1]

1. *The federal mortgage insurance program.*—Since 1934, the United States, through its constituent agencies, and under authority conferred by the National Housing Act, has engaged in a comprehensive, nationwide mortgage insurance program. The insurance involved in the instant case was issued under Title VI of the Act (12 U.S.C. 1736–1746(a))—which was designed to increase the supply of reasonably priced housing available to World War II veterans

[1] "R. —" refers to the multilithed record which was filed by the government in the court of appeals, now on file in this Court.

(12 U.S.C. 1738(a))—and, specifically, under Section 608 (12 U.S.C. 1743), which provides for financing of large multi-family dwellings. The detailed procedure for obtaining such insurance is spelled out in the statute and in regulations promulgated by the Federal Housing Commissioner under Section 607 (12 U.S.C. 1742).[2] First, the mortgagee (after receiving prior formal approval of the FHA) must apply for mortgage insurance on the standard forms prescribed by FHA, giving required information concerning the project.[3] On approving the application, the FHA issues a commitment of insurance, setting out the terms and conditions under which the mortgage will be insured.[4] If the transaction meets all the eligibility tests prescribed by FHA, and the mortgage agreement is executed on an FHA form[5] containing all the required terms and conditions,[6] the mortgage is accepted for insurance. The statute provides that, in the event of default, the mortgagee may qualify for

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[2] See 24 C.F.R., Parts 276-289 (1949 ed.). The 1949 edition of the Code of Federal Regulations contains the regulations for Title VI in force at the time the mortgage in the instant case was executed and insured, July 1 and July 24, 1950, respectively (see R. 1, 3, 14). Since they thus govern the mortgage insurance transaction in this case, these regulations will be cited throughout. Subsequent regulations under Title VI, including those currently in force, are contained in 24 C.F.R., Parts 277-289 (1959 rev.), and 24 C.F.R., Parts 603-611 (1962 rev.).

[3] 24 C.F.R., §§ 280.5-280.7 (1949 ed.).

[4] 24 C.F.R., § 280.8 (1949 ed.).

[5] 24 C.F.R., § 280.10 (1949 ed.).

[6] Section 608(b) of the Act, 12 U.S.C. 1743(b); 24 C.F.R., 280.10-280.22 (1949 ed.).

insurance benefits either by obtaining title to the property (by foreclosure or otherwise) and conveying it to FHA, or by transferring to FHA the mortgage itself.[7] If the mortgage itself is assigned, FHA is authorized to institute foreclosure proceedings and to exercise all the rights of the mortgagee under the mortgage agreement.[8]

2. *The facts of this case.*—On July 1, 1950, to secure a note of $1,328,400, the petitioner executed a mortgage and chattel mortgage in favor of Manufacturers Hanover Trust Company (R. 1–3, 14). On July 24, 1950, this transaction was insured by FHA under Section 608 in the manner described above, with both the note and mortgage executed on printed FHA forms.[9]

Upon the petitioner's default, Manufacturers assigned the note and security instruments to the Federal Housing Commissioner.[10] On November 19, 1963, the government brought this mortgage foreclosure suit on behalf of the Commissioner (R. 1–8). In addition to foreclosure of the security instruments, sale of the property, and, if necessary, the entry of a deficiency judgment, the complaint also requested interim relief in the form of the appointment of a re-

[7] Section 608(c) of the Act, 12 U.S.C. 1743(c); 24 C.F.R. § 282.8 (1949 ed.).

[8] Section 207(k) of the Act, 12 U.S.C. 1713(k), incorporated by reference into Title VI by Section 608(f), 12 U.S.C. 1743(f).

[9] The mortgage note and mortgage appear in the original record as Exhibits A and B, respectively (see R. 8).

[10] The assignments appear in the original record as Exhibits E and F (see R. 8).

ceiver to collect rents during the pendency of the foreclosure proceedings (R. 6–7). This request was based (see R. 5–6) upon the term of the standard-form FHA mortgage, which provides that in any mortgage foreclosure action the holder of the mortgage "shall be entitled to the appointment of a Receiver of the rents and profits of the mortgaged premises as a matter of right and without notice, with power to collect the rents, issues and profits of said mortgaged premises, * * * such rents, and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by this mortgage * * *" (R. 8). The United States renewed its request for the appointment of a receiver in a separate application filed on December 17, 1963 (R. 9–13).

The district court entered an order refusing to appoint a receiver on the ground that State law governed (citing the Eighth Circuit's prior decision in *United States* v. *Kramel*, 234 F. 2d 577); and that under Minnesota law the mortgage provision authorizing such appointment was unenforcible. The court of appeals reversed and directed the appointment of a receiver.

ARGUMENT

The court of appeals held that the government's right to the appointment of a receiver, pursuant to the express terms of a war housing insured mortgage, is governed by federal, rather than State, law. That holding is plainly correct; it is in full accord with the controlling decisions of this Court and a decision

of the Ninth Circuit on the precise issue; and it is not in conflict with any other decision. Further review by this Court is unnecessary.

1. This Court has consistently recognized that where the United States enters into a large number of transactions requiring uniform administration, its rights and liabilities must be determined by reference to federal law. *Clearfield Trust Co.* v. *United States*, 318 U.S. 363; *United States* v. *Allegheny County*, 322 U.S. 174; *United States* v. *Standard Oil Co.*, 332 U.S. 301; cf. *Bank of America* v. *Parnell*, 352 U.S. 29.[11] The court below correctly applied this settled prin-

[11] Thus, in *Clearfield*, *supra*, State law was held inapplicable in an action by the United States on a check issued by the United States Treasury. "The issuance of commercial paper by the United States is on a vast scale and transactions in that paper from issuance to payment will commonly occur in several states. The application of state law, even without the conflict of laws rules of the forum, would subject the rights and duties of the United States to exceptional uncertainty. It would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of the several states. The desirability of a uniform rule is plain." (318 U.S. at 367).

United States v. *Allegheny County*, *supra*, represented an extension of *Clearfield* to cover all cases involving contracts entered into by the United States. "The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State" (322 U.S. at 183).

And, in *United States* v. *Standard Oil Co.*, *supra*, the Court made clear that questions involving federal fiscal policy require "uniform national treatment rather than diversified local disposition" (332 U.S. at 311), and were therefore determinable by reference to federal law.

ciple in holding that federal law determines the government's right to appointment of a receiver in connection with foreclosure of an FHA insured mortgage which specifically authorized such appointment. The FHA, in insuring mortgages on multi-family rental housing for veterans, is carrying out an important part of the nationwide program of mortgage insurance authorized by the National Housing Act.[12] The particular standard mortgage provision involved here—which gives FHA the right to receive, as additional security for the mortgage, the rents coming due during the foreclosure proceedings—was designed to preserve the insurance funds which are used to finance the various parts of the program. In these circumstances, the desirability of a uniform rule is plain (cf. *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 367). Otherwise the extent to which the government could realize on such security would vary from State to State, even though the same mortgage provision was involved. Indeed, if the government's right to a receiver were to depend upon the "vagaries of the laws of the several states" (*Clearfield* case, *supra*, p. 367), the result might be that projects in certain States, which otherwise met the requirements of

[12] The FHA's annual report for the calendar year 1961 shows that in that year the agency issued $4,765,216 of insurance on home mortgage programs, and $928,069 of insurance on project mortgage programs (FHA, 28th Annual Report, at p. 24). The face amount of mortgages and loans insured during 1961 exceeded $6.5 billion (*id.*, at p. 23).

the war housing mortgage program, would be rejected for want of adequate security.[13]

[13] There is no conflict, as petitioner contends (Pet. 14–15), between the holding below and this Court's decisions in *Meyer* v. *United States*, 375 U.S. 233, *United States* v. *Brosnan*, 363 U.S. 237, and *R.F.C.* v. *Beaver County*, 328 U.S. 204. In *Brosnan*, the Court adopted local law to resolve an issue concerning the divesture of junior federal tax liens. *Meyer* held that, absent a congressional expression to the contrary, State law should be applied to determine the priority of federal tax liens. And in *Beaver County*, the Court, feeling that Congress had not expressly indicated whether State or federal law was to govern the definition of "real property," held that the congressional purpose there involved could best be accomplished by adoption of local law. Since State law in these cases was applied not of its own force but because the Court felt such application was dictated by the federal policies there involved, the holdings are fully consistent with *Clearfield* and the case below, which involved consideration of a different federal objective.

Petitioner's claim of a conflict with *United States* v. *Union Livestock Sales Co.*, 298 F. 2d 755 (C.A. 4) is equally baseless. That case held, following the decision of the Eighth Circuit in *United States* v. *Kramel*, 234 F. 2d 577, that State law governs the liability in conversion of a livestock auctioneer who sells chattels which are subject to a Farmers' Home Administration lien. As heretofore noted, the Eighth Circuit recognized that the *Kramel* (and thus *Union Livestock*) question is quite distinct from that presented here. Apart from the fact that different statutes are involved, the considerations which led to the holdings that tort liability in conversion was a matter of State law hardly are dispositive of the issue of whether the government's right to a receiver in a foreclosure proceeding is to be resolved under federal law.

A Fifth Circuit decision, from which the government will shortly petition for certiorari, held that State law governed the question whether a married woman is protected by coverture from personal liability on a loan made by the Small Business

It is true that Section 601(a) of the National Housing Act (12 U.S.C. 1736(a), *infra*, p. 14) defines the term "first mortgage" as "such classes of first liens as are commonly given * * * under the laws of the State in which the real estate is located." Contrary to petitioner's contention (Pet. 8), however, that definition in no way evidences an intention to make all of the government's rights with respect to its mortgage interests dependent upon State law. The definition of "first mortgage" in Section 601(a) was taken from Section 2 of the Federal Home Loan Bank Act, 12 U.S.C. 1422. The legislative history of the latter Act indicates that the reference to State law was designed merely to ensure that all mortgage-type encumbrances on real estate, not junior to any prior lien, would be included within the category, whether denominated as "mortgages," "trust deeds," or as "liens" by State law. See 75 Cong. Rec. 14553–14554, 14560–14566. Moreover, while commercial convenience may well be served by requiring the use of instruments which create interests recognized by State law and thus

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Administration under the Small Business Act of 1953. We think the Fifth Circuit's decision is aberrational and is inconsistent in principle with the whole line of cases applying the *Clearfield Trust* doctrine. But in any event, whatever argument can be made in favor of the applicability of the substantial State law of coverture to the liability of a married woman on a contract with the United States, we see no justification for a federal district court to resort to State procedures in adjudicating a mortgage foreclosure suit authorized by a federal statute to enforce the federally created rights of the United States.

familiar to persons in the community where the lien is to be recorded, altogether different considerations come into play in the event of default. At that point, "the sole situation presented is one of remedies. Commercial convenience in utilizing local forms and recording devices familiar to the community is no longer a significant factor. Now the federal policy to protect the treasury and to promote the security of federal investment which in turn promotes the prime purpose of the Act—to facilitate the building of homes by the use of federal credit—becomes predominate." *United States* v. *View Crest Garden Apts., Inc.*, 268 F. 2d 380, 383 (C.A. 9), certiorari denied, 361 U.S. 884, holding, as did the court below, that federal law controls the enforcibility of the provisions of a standard FHA insured mortgage relating to the appointment of a receiver. See also *American National Insurance Co.* v. *Smith*, 197 F. Supp. 479, 489, 490 (N.D. Iowa).

Section 207(k) of the National Housing Act (*infra*, p. 13) further shows that Congress did not intend, by resorting to State law for the definition of first mortgage, to subject the government's right to foreclosure to the vagaries of State law. Section 608(c) enumerates certain acts which constitute a default, and Section 207(k) provides various remedies that the FHA can pursue, including the institution of foreclosure proceedings.[14] There is no indication that the right to obtain foreclosure is to be governed by State law.

[14] Section 207(k) is applicable to war housing insured mortgages.

The legislative history of the Act shows that Congress intended FHA to have authority to require whatever mortgage terms it deems necessary for the protection of the government's financial interest.[15]

The conclusion of the court below that, under federal law, the government was entitled to the appointment of a receiver does not conflict with the decisions of this Court, or other circuits, as petitioner contends (Pet. 11–15). The court below held merely that, in the circumstances of this case, the appointment of a receiver was warranted. Those circumstances included: (1) the record evidence that FHA had on a prior occasion been forced to assume temporary control and management of the premises to protect the government's interest; and (2) petitioner's admission that it had not made its monthly mortgage payments of $6,700 for the prior four months even though it

[15] In explaining the bill on the floor of the Senate, Senator Fletcher said (78 Cong. Rec. 11974):

> "In connection with the mutual mortgage insurance program provided for in title II, mortgages which are offered to the administrator within 1 year from the date of their execution are to be eligible for insurance *if they* are amortized and *comply with such further requirements as the administrator may prescribe with respect* to maturities, the application of periodic payments to the amortization of principal, and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, *foreclosure proceedings*, anticipation of maturity, additional and secondary liens, and other similar matters. * * *" [Emphasis added.]

Similarly, there is nothing in the regulations of the FHA upon which petitioner relies (Pet. pp. 9–11) to suggest an administrative understanding that the validity of the terms of standard form FHA insured mortgages is to be governed by local law.

had been collecting approximately $8,000 per month in rents. This narrow holding by the court in no way conflicts with the Ninth Circuit's decisions in *View Crest Garden Apts., Inc.* v. *United States*, 281 F. 2d 844, certiorari denied, 364 U.S. 902, and *United States* v. *Queen's Court Apartments, Inc.*, 296 F. 2d 534, both of which also upheld the appointment of a receiver in the circumstances there presented.

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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OCTOBER 1964.

APPENDIX

The National Housing Act, 48 Stat. 1246, as amended, provides in pertinent part:

Section 207(k) [12 U.S.C. 1713(k)]

The Commissioner is authorized either to (1) acquire possession of and title to any property, covered by a mortgage insured under this section and assigned to him, by voluntary conveyance in extinguishment of the mortgage indebtedness, or (2) institute proceedings for foreclosure on the property covered by any such insured mortgage and prosecute such proceedings to conclusion. The Commissioner shall so acquire possession of and title to the property by voluntary conveyance or institute foreclosure proceedings as provided in this section within a period of one year from the date on which any such mortgage becomes in default under its terms or under the regulations prescribed by the Commissioner: *Provided,* That the foregoing provisions shall not be construed in any manner to limit the power of the Commissioner to foreclose on the mortgaged property after the expiration of such period, or the right of the mortgagor to reinstate the mortgage by the payment, prior to the expiration of such period, of all delinquencies thereunder. * * * Pending such acquisition by voluntary conveyance or by foreclosure, the Commissioner is authorized, with respect to any mortgage assigned to him under the provisions of subsection (g) of this section, to exercise all the rights of a mortgagee under such mortgage, including the right to sell such mortgage, and to take such action and advance such sums as

may be necessary to preserve or protect the lien of such mortgage.

Section 601 [12 U.S.C. 1736(a)]

The term "mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable; or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

Section 608(c) [12 U.S.C. 1743(c)]

The failure of the mortgagor to make any payment due under or provided to be paid by the terms of a mortgage insured under this section shall be considered a default under such mortgage, and if such default continues for a period of thirty days, the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Commissioner, within a period and in accordance with rules and regulations to be prescribed by the Commissioner of, (1) all rights and interest arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagors or others, arising out of the mortgage transaction; * * * *Provided*, That the mortgagee in the event of a default under the mortgage may, at its option and in accordance with regulations of, and in a period to be determined by the Commissioner, proceed to foreclose on and obtain possession of or otherwise acquire such property from the mortgagor after default, and receive the benefits of the insurance as herein provided, upon (1) the prompt conveyance to

the Commissioner of title to the property which meets the requirements of the rules and regulations of the Commissioner in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations; and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims that may have been released with the consent of the Commissioner. * * *

Section 608(f) [12 U.S.C. 1742(f)]

The provisions of section 1713(k) of this title shall be applicable to mortgages insured under this section, except that as applied to such mortgages (1) all references in such section 1713(k) to the "Housing Fund" shall be construed to refer to the "War Housing Insurance Fund", and (2) the reference therein to "subsection (g)" shall be construed to refer to "subsection (c)" of this section.

U.S. GOVERNMENT PRINTING OFFICE: 1944